



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 5, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1595

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100872.

Travis County (the "county") received a request for all information related to the requestor's application for the position of corrections officer. You have released much of the requested information to the requestor; however, you contend that the remaining information, which you have submitted to this office for review, is excepted from disclosure under section 552.101 of the Government Code. You argue that the information is excepted from disclosure because release of the information "could arguably constitute libel." You are also concerned that because the information at issue contains references to expunged records, release of the records would constitute a violation of article 55.03 of the Code of Criminal Procedure.

The information at issue relates to the county's pre-employment investigation of the requestor in connection with his application for the position of corrections officer. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You state that the information at issue "arguably impeaches or calls into question the honesty and integrity of the person in question" and that "the release of such information could arguably constitute libel." You contend that section 552.101, in conjunction with "the libel laws," excepts the information from disclosure. However, section 552.101 does not encompass libel law and does not except information from disclosure in conjunction with that law.

You also ask whether the requested information is excepted from disclosure under section 552.101 in conjunction with article 55.03 of the Code of Criminal Procedure. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.01 describes the circumstances in which an individual is entitled to expunction. Article 55.02 describes the procedure whereby an entitled individual may petition for expunction of his criminal records. If the individual is successful in obtaining an expunction order, a copy of the order is sent "to each official or agency or other entity of this state

or of any political subdivision of this state named in the order that there is reason to believe has any records or files that are subject to the order." Code Crim. Proc. art. 55.02 § 3(a). Article 55.02, section 5 directs officials or agencies named in the order to expunge all records or files that are subject to the expunction order. Article 55.03 provides as follows:

After entry of an expunction order:

(1) the release, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision 3 of this article, the petitioner may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the petitioner or any other person, when questioned under oath in a criminal proceeding about the arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Article 55.04 imposes sanctions for violations of an expunction order.

The requested information contains references to expunged criminal records, but not the criminal records themselves. In fact, you state that the county was not named in the expunction order and is not in possession of the expunged case records or files. Furthermore, it appears that the requestor himself brought his expunged records to the attention of the county employee who conducted his pre-employment investigation. Under these circumstances, we conclude that article 55.03 of the Code of Criminal Procedure does not make the requested information confidential, and, therefore, the information is not excepted from disclosure under section 552.101 of the Government Code. The county must release the information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

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Enclosures: Submitted documents

cc: Mr. Crispin Y. Perez
1707 Willow Street
Austin, Texas 78702
(w/o enclosures)